

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Sovereign Homes
Appeal No. 10-23

Hearing Date: August 19, 2011

DECISION OF THE REVIEW BOARD

I. PROCEDURAL BACKGROUND

The State Building Code Technical Review Board (Review Board) is a Governor-appointed board established to rule on disputes arising from application of the Virginia Uniform Statewide Building Code (USBC) and other regulations of the Department of Housing and Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. Enforcement of the USBC in other than state-owned buildings is by local city, county or town building departments. See § 36-105 of the Code of Virginia. An appeal under the USBC is first heard by a local board of building code appeals and then may be further appealed to the Review Board. See § 36-105 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act. See § 36-114 of the Code of Virginia.

II. CASE HISTORY

Sovereign Homes (Sovereign), a licensed homebuilder, appeals determinations of the Frederick County USBC department, and its building official, (collectively referred to hereinafter as the "building official") concerning the construction of a residence located at 399 Hardwood Trail.

In August of 2010, less than a year after completion of the home, the building official, acting on a complaint from the owner of the home, conducted an inspection and found a number of USBC violations. These were communicated to Sovereign in a letter dated August 25, 2010.

Sovereign appealed the building official's determinations to the Frederick County Local Board of Appeals (County appeals board), which heard the appeal in December of 2010 and ruled to uphold the decisions of the building official.

Sovereign then further appealed to the Review Board.

Review Board staff conducted an informal fact-finding conference with the parties, pursuant to the procedures of the Review Board, to clarify the issues in the appeal and to assist in the preparation of the record in the matter.

Subsequent to the conference, Review Board staff drafted a summary of the appeal and distributed the summary to the parties. The parties were given an opportunity to submit

objections, corrections or additions to the staff summary, further documents for the record, and written arguments in support of their position. A hearing was then scheduled before the Review Board and was attended by representatives of Sovereign Homes, the building official and their respective legal counsels.

III. FINDINGS OF THE REVIEW BOARD

In the documents submitted by the building official subsequent to the original enforcement decision and the hearing by the County appeals board, it was noted that the violation which was cited concerning the installation of a hot tub was rescinded by the building official due to the removal of the hot tub from the deck where it had been installed.

The sole issue remaining in Sovereign's appeal was whether there were USBC violations present relative to the false dormers Sovereign had added to the roof of the home. The building official had determined that the false dormers did not comply with the USBC from structural/roof loading considerations and that the flashing of the dormers was inadequate and permitting leakage of water through the roof.

There was also a question of whether adequate plans showing the dormers had been submitted to the building official with the application to obtain the building permit for the home. The

August 25, 2010 letter from the building official required Sovereign to submit a design for the roof with dormers prepared by a Virginia licensed architect or engineer.

With respect to the original plans submitted for the home, the Review Board finds that changes in construction occur frequently after building permits are obtained and to correct a USBC violation for the plans not meeting the actual construction, the permit applicant may submit an amendment to the application, amounting to "as-built" drawings to correct the USBC violation. In this case, the Review Board does not find the plans to be of concern, but rather the issue for resolution in the appeal is whether the actual construction of the roof complies with the USBC.

With respect to the flashing and water leakage associated with the false dormers, the Review Board finds that the evidence and testimony raised sufficient question about Sovereign's role in repairs, which had been attempted at the direction of the owner of the home. Therefore, the Review Board finds that Sovereign is not responsible for any USBC violations relative to the flashing or water leaks.

With respect to the structural/roof loading issues, the Review Board finds there to be sufficient evidence and testimony to substantiate that the construction of the roof is in violation of the USBC. At the request of a contractor hired by

the owner, the roof construction was evaluated by a Virginia-licensed professional engineer and was found to be of inadequate design to support the as-built false dormers with stone veneer siding. Sovereign did not submit its own engineering report or any supporting calculations or evidence to repudiate the evaluation by the professional engineer.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the decision of the building official, as upheld by the County appeals board, relative to structural design and loading of the roof being in violation of the USBC, to be, and hereby is, upheld.

/s/*

Chairman, State Technical Review Board

Nov. 18, 2011

Date Entered

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty (30) days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this

decision by filing a Notice of Appeal with Vernon W. Hodge,
Secretary of the Review Board. In the event that this decision
is served on you by mail, three (3) days are added to that
period.